IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13375 of 2005
WITH
SPECIAL CIVIL APPLICATION No. 13415 OF 2005
WITH
SPECIAL CIVIL APPLICATION No. 13389 OF 2005
WITH
SPECIAL CIVIL APPLICATION No. 13390 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINODRAY MADHAVJIBHAI SARAIYA & 1 - Petitioner(s)

Versus

SAVARKUNDLA MUNICIPALITY & 4 - Respondent(s)

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Appearance :
MR YN RAVANI for Petitioner(s) : 1 - 2.
MR DHAVAL D VYAS for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3, 5,
GOVERNMENT PLEADER for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2005

ORAL JUDGMENT

1. Rule. Shri DD Vyas, learned advocate waives service of rule for respondent no.1. Shri MR Mengdey, learned AGP waives service of rule for respondents – State Authorities.

2. With consent of ld. Advocates for the parties, the matters are taken up for final hearing today.

3. As common question of law and facts arise in the present group of petitions, the same are being disposed of by this common order.

4. The petitioners claim to be in the possession of the place, which is known as “Pala” situated in the river Navli, which passes through middle of Savarkundla town. River Navli divides Savar and Kundla towns and it is passing through and flowing between the two towns. That the petitioners are carrying on the business activities in the said Palas.

5. In this group of petitions, the respective petitioners have prayed for appropriate writ, order or direction quashing and setting aside the Resolution NO.8 dated 12th April, 2005 passed by the Savarkundla Municipality by which it is held that the said river land does not belong to Nagar Palika and it is of the ownership of the State Government and it has been resolved to cancel whatever the permission granted by the Nagar Palika to

put up Palas / cabins on the said land and it has been decided not to recover any fee and/or rent by the Nagar Palika.

6. It appears from the record that the Administrator of the Savarkundla Nagar Palika issued notices dated 15th April, 2005 calling upon the petitioners to remove the Palas / cabins and the said notices issued pursuant to the aforesaid Resolution No.8 dated 12th April, 2005. The aforesaid public notices were challenged by the petitioners by way of Special Civil application No. 6965 of 2005 with Special Civil Application No.8050 of 2005 and the same came up for hearing before the Division Bench of this court and at the time of hearing of the aforesaid Special Civil Application, it was found that the City Survey Superintendent and Addl. Mamlatdar, Savarkundla had also issued notices to the petitioners dated 13th April, 2005 and had intimated them to remain present before him either in person or through their representative and in the meanwhile, the public notices were issued, which was under challenge. It was the contention of the petitioner that they are on their respective business places by virtue of the land allocated to them by erstwhile Ruler of Savarkundla and the said land is now vested in the

Municipality. Division Bench of this court allowed the aforesaid Special Civil application by observing that when the notice has been issued by the government, it was absolutely improper for the Administrator to give public notices and to call upon the petitioners to remove their Palas / cabins from the land in question and therefore, the same is in violation of principle of natural justice and therefore, this court set aside the aforesaid public notices and the Government was directed to grant hearing to the petitioners by issuing fresh notice/s and to give them proper time to make preparation for hearing and the petitioners are also allowed to produce all necessary documents, which they wish to rely upon. It appears that in aforesaid Special Civil Applications, the petitioners also challenged the resolution no.8 dated 12th April, 2005, which is now challenged in the present Special Civil Application. It appears that the learned advocate appearing on behalf of the petitioners before Division Bench did not press for the said relief and the Division Bench of this court observed that it would be open for the petitioners to challenge the resolution no.8 before the appropriate forum. It is the case on behalf of the petitioners that therefore, the petitioners have

challenged the aforesaid resolution no.8 before this court by way of the present Special Civil Application.

7. It is the contention of the petitioners that they are on their respective business places by virtue of the land allocated to them by erstwhile Ruler of Savarkundla and the said land is now vested in the Municipality and therefore, the resolution of Municipality impugned in the present Special Civil Application to the effect that the land in question is not of the ownership of the Municipality and that it is of the ownership of the State Government, is illegal and contrary to the evidence and therefore, it is requested to set aside the same.

8. In response to the notice issued by this court, Shri Dhaval D Vyas, learned advocate appears on behalf of the respondent no.1 and Shri M.R. Mengdey, learned AGP appears on behalf of the respondent nos. 2 to 4. It is submitted by both the learned advocates that at present, the State Government is already hearing the proceedings / notices issued by the State Government as per the directions issued by the Division Bench of this court in its order dated 14th June, 2005 passed in Special Civil Application No.6965 of 2005 and other cognate matters and the said proceedings are with

regard to directing the petitioners to remove from the land in question / Palas in question and incidentally the said authority is also required to consider the contention on behalf of the petitioners that the land is vested with the Municipality and the same is of the ownership of the Municipality and not the State Government. Therefore, it is submitted that while disposing of the present Special Civil Application, the petitioners are required to be relegated before the State Government to raise all these questions and the State Government is at present hearing the notice/s and incidentally in the said proceedings, the present dispute and controversy in question is also required to be considered by the State Government.

9. At this stage, Shri M.C. Bhatt, learned advocate appearing on behalf of the petitioners has submitted that the authority, which is at present deciding the dispute and hearing the show cause notice pursuant to the order passed by the Division Bench of this court, is facing contempt proceeding initiated at the instance of the petitioners and therefore, there might be bias and the petitioners may not get the real justice and it is therefore, requested not to relegate the petitioners to the same authority.

10.As stated above, the respondent no.4 – State Government is already hearing the notices by which the petitioners are called upon to remove the Palas / lands in question pursuant to the order passed by the Division Bench of this court dated 14th June, 2005 passed in Special Civil Application No. 6965 of 2005 and other cognate matters and it is reported that the parties have already appeared before authority and made their submissions. While dealing with and deciding the said notices, the said authority is also required to consider the contention on behalf of the petitioners with regard to the ownership of the lands/Palas in question, as it is contended on behalf of the petitioners that the Palas in question are of the ownership of the Nagar Palika now in view of the vesting, and therefore, the said authority is bound to consider the said question. The petitioners have never made any grievance against the said authority with regard to the bias if any, and they have already made their submissions. Therefore, when the question with regard to the ownership is incidentally being considered by the said authority while considering the notice/s with regard to removal from Palas, it will be appropriate that the said authority may also consider

the question with regard to the ownership also and the petitioners are, therefore, required to be relegated to approach the said authority and the said authority – respondent No.4 is required to be directed to decide the question with regard to the ownership also. Therefore, while disposing of the present Special Civil Application, it is directed that the petitioners may approach the respondent No.4 i.e. the authority, who is deciding the aforesaid notices, within a period of two weeks from the receipt of this order, if they so choose and make submissions with regard to the ownership directly, as incidentally they have already made submissions before the said authority that the lands/ Palas in question belong to the Municipality and not of State Government and make submissions before the respondent No.4 and/or the authority, who is considering the aforesaid notice/s. The respondent No.4 - the authority, who is considering the notice as per order passed by the Division Bench of this court dated 14th June, 2005 in the aforesaid Special Civil Applications, is therefore, directed to take appropriate decision with regard to the ownership of the lands / Palas in question also on the basis of the material already produced before him and/or the

material that may be produced on behalf of the petitioners within a period of two weeks from today, as stated above, if the petitioners so choose. The authority shall take appropriate decision in accordance with law and on merits as aforesaid.

11. The apprehension on behalf the petitioners that there will be a bias as the said authority is facing contempt proceedings has no basis. The said apprehension is also not well founded as even otherwise, the said authority is considering the notices as per the order passed by the Division Bench of this court as stated above and there is no grievance made till date with regard to bias, so far as those proceedings are concerned. Even otherwise, if any adverse order is passed aginast the petitioners, the same can be challenged by the petitioners subsequently before this court and/or before appropriate forum.

12. For the reasons as stated above, the petitions are disposed of in terms of above directions. Rule in each petition, stands discharged.

13. At this stage, Shri M.C. Bhatt, learned advocate appearing on behalf of the petitioners requests to continue ad interim relief granted by this court while issuing the notices in the present Special Civil

Application, so as to enable the petitioners to challenge this order before the appellate forum. In the facts and circumstances of the case, the ad-interim relief granted earlier is directed to be continued for a period of two weeks from today.

(M.R.SHAH,J)

Shekhar/-